

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

STEPHEN COYNE,

Plaintiff,

v.

WINDSTREAM COMMUNICATIONS,

Defendant.

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NO. 1:14-CV-00630-AWA

**DECLARATION OF NICOLE M. CONGER**

1. My name is Nicole M. Conger and I am over 18 years of age, competent to make this declaration, and making this declaration pursuant to the provisions of 28 U.S.C. §1746.

2. I am licensed by the State of Texas to practice law. My bar number is 24064571. I represent the Plaintiff in this matter.

3. Attached as **Exhibit 11 Part 1**, **Exhibit 11 Part 2**, and **Exhibit 12** to Plaintiff's Motion for Sanctions for Discovery Abuse are printouts of selected Worksheets of two Microsoft Excel files that Plaintiff's counsel obtained from Joseph Brecht.

4. Joseph Brecht is a former employee of Defendant. Plaintiff listed Joseph Brecht as a witness in this case in his initial disclosures.

5. Plaintiff's counsel contacted Joseph Brecht prior to the 11/27/2015 close of the discovery period in this case to determine if Mr. Brecht had any documents relevant to Plaintiff's case.

6. Mr. Brecht informed Plaintiff's counsel that he had copies of Defendant's Stack Ranking Reports from 2012. Mr. Brecht agreed to voluntarily provide Plaintiff with the copies of the Stack Ranking Reports that he had in his possession. Mr. Brecht subsequently provided Plaintiff with an Microsoft Excel file labelled "Copy of STACK RANKING REPORT (2012-08)" and a Microsoft Excel file labelled "December 2012 Weekly Sales Report 12.9\_010813".

7. I spent the following amount of time pursuing copies of Defendant's 2012 Stack Ranking Reports:

7 hours of work to prepare to confer and confer with opposing counsel about production of the Stack Ranking Reports and other items of discovery prior to filing the 11/27/15 Motion to Compel

28.3 hours preparing to draft and drafting Plaintiff's 11/27/15 Motion to Compel (ECF Doc #38)

17.1 hours conferring with opposing counsel regarding Plaintiff's Motion to Compel after the motion was filed, including telephone conferences, written correspondence, and reviewing documents produced in response to Motion

3 hours assisting with the preparation of Plaintiff's Motion for Sanctions

8. I graduated from St. Mary's University School of Law in 2011. I was first licensed to practice law by the State of Texas on November 4, 2011. I have practiced employment law for plaintiff-employees continuously since January 2014. I have two years of experience representing employees before the Equal Employment Opportunity Commission and acting as second chair in employment litigation in Federal and State Court. I currently bill hourly clients of the Ross Law Group \$300.00 per hour for my work.

9. I have also reviewed the time entries in our firm's Practice Master software for first chair Daniel B. Ross, senior attorney Charles L. Scalise, and the drafter of the Motion for Sanctions, Christine A. Hopkins.

- (a) Mr. Ross spent 29.4 hours on Plaintiff's Motion to Compel, conferring with opposing counsel before and after the filing of the Motion regarding Defendant's deficient discovery responses, and on Plaintiff's Motion for Sanctions.
- (b) Ms. Hopkins spent 10.9 hours on Plaintiff's Motion for Sanctions for Discovery Abuse.
- (c) Mr. Scalise spent 9 hours on Plaintiff's Motion to Compel.
- (d) Plaintiff can provide contemporaneous billing records for *in camera* review at hearing to support the time spent by all counsel.

10. Mr. Ross' hourly rate is \$450.00 per hour. Mr. Ross graduated from the University of Texas School of Law in 1994 and has over seventeen years of experience practicing employment law in State of Texas. Ms. Hopkins' hourly rate is \$375.00 per hour. Ms. Hopkins graduated from UC Berkeley School of Law in 2005 and has nine years practicing employment law in the States of California, Michigan, and Texas. Mr. Scalise's hourly rate is \$425.00 per hour. Mr. Scalise graduated from the University of Iowa College of Law in 1988 and has over 20 years practicing employment law in Florida and Texas.

11. The chart attached as **Exhibit 10(B)** reflects the rates at which courts in North, South, and West Texas have awarded attorney fees to attorneys in employment law matters. The rates awarded by the Western District of Texas range from \$300 per hour to \$700 per hour, demonstrating the reasonableness of the fees requested by Plaintiff's counsel in this Motion for Sanctions.

12. Plaintiff's counsel, in total, requests **\$37,552.50** as sanctions for Defendant's failure to produce the Stack Ranking Reports broken down by attorney as follows:

Nicole M. Conger:	55.4 hours x \$275-300 per hour =	\$16,410.00
Daniel B. Ross:	29.4 hours x \$450 per hour =	\$13,230.00
Christine A. Hopkins:	10.9 hours x \$375 per hour =	\$4,087.50
Charles L. Scalise:	9 hours x \$425 per hour =	\$3,825.00

I declare under penalty and perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 16, 2015 in Austin, Texas.



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**Nicole Conger**